

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7662

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JEROME J. WELLS,
EDWARD A. SWEETSER,
FRANCES M. BARBEAU,
WALTER HOLMES, CONRAD
MOORE, DAVID N.
O'CONNELL, LAURA MAY
NOYES, RONALD MILES
MAGONI, SHIRLEY A.
MARSH, ROBERT LEE BOOTH,
RAYMOND CHESTER LUCAS, JR.,
Appellants

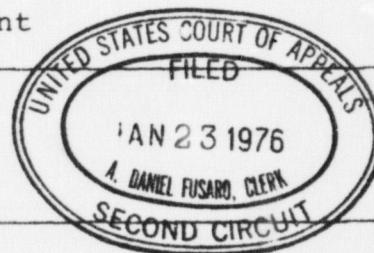
B

v.

JAMES E. MALLOY,
Commissioner of Motor
Vehicles of the State
of Vermont,
Appellee

On Appeal from the United States District Court
for the District of Vermont

APPENDIX OF APPELLANTS



Roger E. Kohn, Esquire
P. O. Box 136
Hinesburg, Vermont 05461
Counsel for Appellant
Jerome Wells

Vermont Legal Aid, Inc.
150 Cherry Street
Burlington, Vermont 05401
Counsel for all other
Appellants

PAGINATION AS IN ORIGINAL COPY

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CLASS-ACTION

-1-

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Civ. 73-30

COFFRIN

Jury demand date:

C. Form No. 106 Rev.

TITLE OF CASE

CLASS ACTION

ATTORNEYS

For plaintiff:

~~Roger E. Kohn, Esq.~~
 Vermont Legal Aid, Inc.
 P. O. Box 532
 Burlington, Vermont 05401

Villa & Kohn, Esqs.
 P. O. Box 136
 Hinesburg, Vermont 05461

Zander B. Rubin, Esq. V.L.A.
 756 Railroad St., St. Johnsbury, VT

Kathleen M. Mitchell, Esq., VLA, Spgfld
 James R. Flett, Esq.
 Vermont Legal Aid, Inc.
 54 Lake Street
 St. Albans, VT 05478

JEROME J. WELLS, On his own behalf and
 on behalf of all those similarly
 situated

Intervening Pltfs.:

Edward A. Sweetser

Frances M. Barbeau

Walter Holmes

Conrad Moore

David N. O'Connell

Laura May Noyes

Ronald Miles Magoni

Shirley A. Marsh

Robert Lee Booth

Raymond Chester Lucas, Jr.

vs.

JAMES E. MALLOY, Commissioner of Motor
 Vehicles of the State of Vermont

For defendant:

Richard M. Finn, Esq.
 Assistant Attorney General
 Office of the Attorney General
 Montpelier, VT.

Three Judge Court requested

| STATISTICAL RECORD | COSTS | DATE | NAME OR RECEIPT NO. | REC. | DISB. |
|------------------------------|--------------|------|---------------------|------|-------|
| S. 5 mailed FEB 5 1973 | Clerk | | | | |
| S. 6 mailed AUG 5 1974 | Marshal | | | | |
| asis of Action: Civil Rights | Docket fee | | | | |
| et, T. 42, U.S.C., Sec. | Witness fees | | | | |
| 983 & T 28 U.S.C., Secs | Depositions | | | | |
| 843(3) & 1331(a) | | | | | |
| ction arose at: 2 | | | | | |

| DATE 1973 | PROCEEDINGS | Date Order Judgment |
|--------------|--|------------------------|
| Jan. 30 | Filed Motion for leave to proceed in Forma Pauperis and Affidavit in Support of Motion to proceed in Forma Pauperis. | 1. |
| " " | Filed Order that Plaintiff may file and the Clerk shall accept said Complaint without prepayment of the required fee and Plaintiff shall not be required to pay the Marshal's fees for service. Mailed copy to Plaintiff's attorney. | 2. |
| " " | Filed Complaint. | 3. |
| " " | Issued Summons. | |
| " 31 | Filed Motion for Temporary Restraining Order. | 4. |
| " " | " Stipulation. | 5. |
| Feb. 1 | Filed summons returned served. | 6. |
| " 6 | Issued Temporary Restraining Order and delivered same to Marshal for Service. | |
| " 8 | Filed notice of appearance of Villa & Kohn, Esqs. for plaintiff. | 7. |
| " " | " Temporary Restraining Order. | 8. |
| Mar. 8 | Filed Defendant's answer | 9. |
| " " | Filed Stipulation. | 10. |
| " 15 | Filed Motion of Edward A. Sweetser to intervene. | 11. |
| " 19 | Filed Motion of Frances M. Barbeau to intervene. | 12. |
| " 20 | " Deft's Answer to Intervenor's Complaint. | 13. |
| " 23 | Filed Stipulation. | 14. |
| " " | " Stipulation. | 15. |
| " 30 | Filed Order allowing Frances Barbeau to intervene. | 16. |
| " " | Filed Complaint of Frances Barbeau. | 17. |
| " " | Filed Motion for Temporary Restraining Order as to Frances Barbeau. | 18. |
| " " | Issued Temporary Restraining Order as to Frances Barbeau and delivered same to Marshal for service. | |
| " " | Filed Order allowing intervention of Edward A. Sweetser. | 19. |
| " " | Filed Intervenor's Complaint of Edward A. Sweetser. | 20. |
| " " | Filed Motion for Temporary Restraining Order of Edward A. Sweetser. | 21. |
| " " | Issued Temporary Restraining Order of Edward A. Sweetser and delivered same to Marshal for service. | |
| Apr. 6 | Filed TRO with Marshal's return of service as to Edward A. Sweetser. | 22. |
| " " | " " " " " " " " Frances Barbeau. | 23. |
| " 20 | Filed motion of David N. O'Connell to intervene. | 24. |
| " " | " " for TRO | 25. |
| " 25 | Filed Stipulation. | 26. |
| May 7 | Filed Order granting Pltf. O'Connell's motion to intervene. Mailed copy to attorneys. | 27. |
| " " | " Intervenor's Complaint. | 28. |
| " 11 | Issued Temporary Restraining Order and delivered same to Marshal for service. Mailed copy to Intervenor's Attorney, James R. Flett, Esq. | |
| May 15 | Filed TRO with Marshal's return of service as to David N. O'Connell. | 29. |
| Oct. 5 | " Motion of Conrad Moore to Intervene as pltf. | 30. |
| " " | " Intervenor's Motion for TRO. | 31. |
| " 12 | " Stipulation re Intervenor Conrad Moore. | 32. |
| " 18 | Filed Order--granting Conrad Moore's Motion to Intervene as Plaintiff. Copy mailed to Attorneys. | 33. |
| " " | Filed Intervenor Moore's Complaint. | 34. |
| " " | Issued TRO and delivered same to Marshal as to Conrad Moore. Copy mailed to Intervenor Moore's Attorney. | |
| " 19 | Filed TRO returned served. (as to Conrad Moore) | 35. |
| Dec. 13 | " Motion of Walter Holmes to Intervene as Party Pltf. | 36. |
| " " | " Motion of Intervening Pltf. for Temporary Restraining Order. | 37. |
| " " | Filed stipulation regarding intervening pltf. Holmes, | 38. |

| DATE | PROCEEDINGS | Date Order Judgment N |
|---------|--|-----------------------|
| 1973 | | |
| Dec. 27 | Filed Order granting Motion of Walter Holmes to intervene as party Plaintiff. Copy mailed to attys of record and deft. | 39. |
| " | Filed Complaint of Intervening Plaintiff, Walter Holmes. | 40. |
| " | Issued TRO and delivered same to Marshal for service. | |
| 1974 | | |
| Jan. 7 | Filed Summons of Intervening Pltff. Holmes returned served. | 41. |
| Feb. 26 | Filed Plaintiffs' memorandum of law on his request for a three-judge Court. | 42. |
| " | In Chambers, hearing on Plaintiffs' request for three-judge court. Roger Kohn, Esq. and Kathleen Mitchell, Esq. for Plaintiffs; William Wuester, Esq. for Defendant. | |
| " | Ordered: that defendant file a memorandum by the end of this week (3/2/74); plaintiffs have additional week to file reply memorandum. | |
| " | Statements made to Court by Mr. Kohn, followed by Mr. Wuester. | |
| " | Decision reserved. | |
| Mar. 5 | Filed Deft's. Memorandum of Law. | 43. |
| " 13 | " Motion of Laura May Noyes to Intervene as Party Pltff. | 44. |
| " | " Stipulation--consenting to intervention of Laura May Noyes, to restoring Pltff's right to operate motor vehicle, until further order of Court. | 45. |
| " | " Stipulation--consenting to intervention of Ronald Miles Magoni, to restoring Pltff's right to operate motor vehicle, until further order of Court. | 46. |
| " 15 | " Order granting Laura May Noyes to intervene as party pltff. Mailed copy to attorneys. | 47. |
| " | " Motion for Temporary Restraining Order. | 48. |
| " 18 | " Complaint of Intervening Pltff, Laura May Noyes. | 49. |
| " | Issued Summons of Intervening Pltff. Noyes. | |
| " | " Temporary Restraining Order and delivered same to Marshal for service. Mailed copy to Zander Rubin, Esq. and Richard M. Finn, Esq. | |
| " 19 | Filed Summons and Temporary Restraining Order returned unserved. | 50. |
| " 22 | " Motion of Ronald Miles Magoni to intervene as party plaintiff. | 51. |
| " | " " for TRO. | 52. |
| " 25 | " Pltffs' Memorandum of Law re 28 USC § 1341, Exhaustion and Abstention. | 53. |
| " 26 | Filed Motion of Robert Lee Booth to Intervene as Party Plaintiff. | 54. |
| " | Filed Stipulation. | 55. |
| " | Filed Motion of Shirley A. Marsh to Intervene as Party Plaintiff. | 56. |
| " | Filed Stipulation. | 57. |
| Apr. 1 | Filed Order granting Robert Lee Booth to intervene as party plff. | 58. |
| " 1 | " " Shirley A. Marsh " " " " " " | 59. |
| " 3 | " Complaint of intervening plaintiff, Robert Lee Booth. | 60. |
| " | " Motion for TRO. | 61. |
| " | " Complaint of intervening plaintiff, Shirley A. Marsh. | 62. |
| " | " Motion for TRO. | 63. |
| " 5 | " Pltff-Intervenor Booth's Temporary Restraining Order. | 64. |
| " | " Pltff-Intervenor Marsh's Temporary Restraining Order. Mailed two copies of each of tro to Zander Rubin 4-8-74. | 65. |
| May 6 | Filed Stipulation re intervention of Zander B. Rubin. | 66. |
| " | Filed Motion of Raymond Chester Lucas, Jr. to Intervene as Party Plaintiff. | 67. |
| " | Filed Intervening Pltff. Lucas's Motion for Temporary Restraining Order. | 68. |

Wells, et al v Malloy, et al.

| DATE | PROCEEDINGS | Date of Judgment |
|---------|---|------------------|
| 1974 | | |
| May 7 | Filed Plaintiff Intervenor Lucas' Temporary Restraining Order. | 69. |
| " " | " Order granting motion of Raymond Chester Lucas, Jr., to intervene as party plaintiff. Copy mailed to attys. | 70. |
| " " | " Complaint of Intervening Plaintiff, Raymond Chester Lucas, Jr. | 71. |
| July 1 | Filed Opinion and Order - - The motion of defendant Malloy is granted and the plaintiff's complaint and those of the intervenors are hereby dismissed and the Temporary Restraining Orders are hereby dissolved. Copy mailed to attorneys. | 72. |
| " 29 | Filed Pltf. and Intervening Pltfs' Notice of Appeal. Mailed copy to VLA, St. Albans, Vt., Villa & Kohn, Esqs., Zander B. Rubin, Esq. (VLA), St. Johnsbury, Vt., Kathleen M. Mitchell, Esq. (VLA), Springfield, Vt., James R. Flett, Esq., (VLA) St. Albans, Vt., Richard M. Finn, Esq., Court Reporter, Judge Coffrin and Clerk, U. S. Court of Appeals for the Second Circuit. | 73. |
| Sept. 5 | Mailed record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit, New York, N. Y. Attorneys notified. | |
| 1975 | | |
| Feb. 18 | Filed Judgment from U. S. Court of Appeals for the Second Circuit-- Order of District Court is reversed and that the action be and it hereby is remanded for further proceedings in accordance with the opinion of this Court with costs to be taxed against the appellee. Copy mailed to Counsel of Record. | 74. |
| Feb. 21 | Filed Stipulation--that intervening plaintiffs may amend their complaints in accordance with the amendment requested by Pltf. Wells. | 75. |
| Mar. 10 | Received closed file from U. S. Court of Appeals for the Second Circuit. | |
| Mar. 12 | Filed Stipulation that plaintiff may amend his complaint. | 76. |
| " 24 | In Chambers before Judge Coffrin. Roger E. Kohn, Esq. and Michael Hertz, Esq. for plaintiffs, Richard M. Finn, Ass't. Attorney General for defendant. | |
| " " | STATUS CONFERENCE. | |
| " " | A discussion was held between Court and Counsel. | |
| " " | ORDERED: Complaint is hereby amended in accordance with stipulation filed March 12, 1975. | |
| " " | Plaintiffs have until May 1, 1975 to file memorandum and defendant has until June 1, 1975 in which to file reply memorandum. Agreed statements of facts to be filed by counsel. | |
| Apr. 14 | Filed Stipulation re constitutionality of Vt. Statutes. | 77. |
| May 5 | Filed plaintiffs' motion for summary judgment. | 78. |
| " 5 | " memorandum of law in support of summary judgment on the merits of this action. | 79. |
| June 3 | Filed Stipulation and Request for Additional Time. | 80. |
| " " | Upon consideration of Stipulation that Deft. be permitted to file his Memorandum of Law on or before June 27, 1975, in lieu of June 1, 1975, it is | |
| " " | So Ordered. Attorneys notified. | |
| July 1 | Filed Deft's Memorandum of Law. | 81. |
| Aug. 12 | In Court before Judge Coffrin. Roger E. Kohn, Esq. for plaintiff and Intervenor, Richard M. Finn, Esq. for defendant. | |
| " " | Hearing on plaintiff's motion for Summary Judgment. | |
| " " | Opening statements made to Court by Mr. Kohn followed by Mr. Finn. | |
| " " | Decision reserved. | |

Jerome J. Wells, On his own behalf, etc. et al vs. James E. Malloy, etc.

DATE
1975

PROCEEDINGS

| | | |
|---------|---|-----|
| Oct. 24 | Filed Defendant's Statement, | 82. |
| " " | Filed Opinion. | 83. |
| " " | Filed Judgment on Decision by the Court. Plaintiffs' Motion for Summary Judgment is denied, Defendant's Motion is granted. The temporary restraining orders in effect are hereby dissolved. Judgment entered for the defendant without costs. Mailed copies to Attorneys. | 84. |
| Nov. 21 | Filed plaintiff's Notice of Appeal. Mailed copy to Roger Kohn, Esq., Richard M. Finn, Esq., Michael H. Lipson, Judge Coffrin, Court Reporter and Clerk, U. S. Court of Appeals. | 85. |
| " 25 | " Stipulation re intervenors; transcript not necessary for appeal. | 86. |
| Dec. 12 | " Scheduling Order. | 87. |
| " 18 | Mailed Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. | |

CIVIL ACTION NO.

COMPLAINT

I. Introductory Statement

This is a civil rights action challenging the suspension of the right to drive any car within the State of Vermont for the sole reason that plaintiff has failed to pay a tax when he purchased two cars several years ago. Plaintiff seeks to maintain this case as a class action.

II. Jurisdiction

1. This is an action for declaratory and injunctive relief brought under the Civil Rights Act, 42 U.S.C. § 1983, and under the Fourteenth Amendment to the United States Constitution. The amount in controversy exceeds \$10,000 exclusive of the interest and costs.

2. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. §§ 1343(3) and 1331(a), this suit being brought

to redress the deprivation under color of state law of rights secured by the Constitution of the United States providing for due process and equal protection of the law for all citizens.

III. Parties

3. The named plaintiff herein, Jerome J. Wells, resides and is domiciled in Milton, Vermont.

4. Pursuant to Fed. R. Civ. P. 23(a), (b)(1), (2), and (3), plaintiff sues on his own behalf and on behalf of all persons similarly situated. The class is composed of all persons in the State of Vermont who have had their license suspended for failure to pay a Vermont Motor Vehicle Purchase and Use Tax.

5. Defendant, James E. Malloy, Vermont Commissioner of Motor Vehicles is sued individually and in his official capacity. Defendant is responsible for the general operation and enforcement of the motor vehicle laws of the State of Vermont, and has collection and enforcement responsibility for the Vermont Motor Vehicle Purchase and Use Tax, as set forth in 32 V.S.A. § 8901 et seq.

IV. Claim

6. Plaintiff's right to operate a motor vehicle within the State of Vermont has been suspended solely because he has failed to pay to the State of Vermont an amount of tax due under the Vermont Motor Vehicle Purchase and Use Tax Statute, 32 V.S.A. § 8901 et seq. A copy of the Motor Vehicle Department's demand for payment and suspension notice are

attached hereto and designated Exhibit I.

7. Plaintiff does not dispute that said tax is owing in the amount alleged.

8. Plaintiff is financially unable to pay the said Purchase and Use Tax.

9. Plaintiff requires his motor vehicles driver's license to visit the doctor, shop for groceries, and for other necessities and amenities of daily life. No other members of plaintiff's family residing with him have a driver's license. Plaintiff suffers tremendous hardship, and irreparable and immediate harm from the continued suspension of his license.

10. The statutory provisions in question in effect set up two classes of motor vehicle operators: (1) those who owe a purchase and use tax, and (2) those who owe no such tax. The State of Vermont has no compelling interest in so classifying its citizens, nor is the classification reasonably related to the purpose of the motor vehicle licensing statutes. Thus the statutory provisions violate equal protection of the law.

V. Three-Judge Court

11. Plaintiff moves that a three-judge court be convened pursuant to 28 U.S.C. §§ 2281 and 2284.

VI. Relief Requested

WHEREFORE PLAINTIFF PRAYS THIS COURT:

- (1) Enter an order that this action be maintained as a class action.
- (2) Convene a three-judge district court to consider the merits of this action.
- (3) Declare 32 V.S.A. § 8909 unconstitutional.
- (4) Issue its preliminary and permanent injunction requiring the defendant to restore plaintiff's motor vehicle driver's license and the rights attendant thereto.
- (5) Consolidate the hearing on the request for a preliminary injunction with the trial on the merits.
- (6) Order such further relief as is appropriate and just.

DATED: January 24, 1973.

/s/ Roger E. Kohn
ROGER E. KOHN
Vermont Legal Aid, Inc.
192 Bank Street - Box 562
Burlington, Vermont

I have read the above complaint, and the facts therein are true to the best of my knowledge.

January 24, 1973

/s/ Jerome J. Wells
Jerome J. Wells

Signed and sworn to before me this 24th day of January, 1973.

/s/ Roger E. Kohn
Notary Public

J. E. MALLOY
COMMISSIONER
FRANK CROUT
DEPUTY COMMISSIONER



STATE OF VERMONT
DEPARTMENT OF MOTOR VEHICLES
MONTPELIER
05602

TO: Jerome J. Wells
RFD # 2
Milton, Vermont

DATE: July 28, 1972
RE: Purchase and Use Tax

PLEASE REFER
File Number: 072872 - 213

We note in regards to Motor Vehicle Purchase & Use Tax that you have been notified of delinquent tax on the following vehicles. As of this date, we have had no reply; therefore under Title 32, Chapter 219, Section 8907, we find it necessary to assess tax and/or penalty on the book value of the vehicles at the time of the first registration by you as follows.

| | | |
|----------------------|---------------|--------------|
| 1967 Chevrolet Truck | 001377119370 | \$ 60.00 |
| 1965 Chevrolet Truck | 1348053106551 | <u>69.00</u> |

Total tax and/or penalty due: \$129.00

May we remind you the above represents a partial audit of your registrations, as our files are now in the process of being updated. A more complete audit of your records will be made and if additional vehicles on which tax has not been paid are located, you will be notified in a similar manner.

In reference to the above amount, please be advised that providing full payment is not received by this Department before AUGUST 3, 1972, your right to operate a motor vehicle in the State of Vermont shall be suspended and remain in effect until payment is made in full.

Yours very truly,

Elmer S. Carr
Elmer S. Carr, Investigator
Purchase and Use Tax Division

T 111 - A
PSC/lpd

J. E. MALLOY
Commissioner

R. E. GROUT
Deputy Commissioner



STATE OF VERMONT
DEPARTMENT OF MOTOR VEHICLES
MONTPELIER

05602

December 28, 1972
File #072872-21B
Amount \$129.00

Jerome J. Wells
R.F.D. #2
Milton, Vermont

Dear Sir or Madam:

Please be advised that the Purchase and Use Tax section has requested this division to suspend your operator's license and/or your operating privilege in the State of Vermont.

If the Purchase and Use Tax and/or penalty described in the enclosed letter is not received prior to Jan. 10/73, the suspension will be issued and will remain in effect until payment in full is received.

Return or present this letter with your payment.

Very truly yours,

L. E. Parker
Director of Driver Improvement

LP:
enclosure

STATE OF VERMONT
DEPARTMENT OF MOTOR VEHICLES, MONTPELIER, VT. 05602

SUSPENSION NOTICE

TO: WELLS, JEROME, JEAN
RFD 4
MILTON

VT 05468

BORN ON 07/01/23
IN MILTON VT
LICENSE W05433667625170123
NO. S-04453

WHEREAS THE COMMISSIONER OF MOTOR VEHICLES HAS REASON TO BELIEVE THAT YOU ARE AN IMPROPER PERSON TO OPERATE MOTOR VEHICLES, BECAUSE OF YOUR FAILURE TO PAY THE PURCHASE AND USE TAX AND/OR PENALTY AS REQUIRED BY STATUTE;

NOW THEREFORE,
IT IS ORDERED, IN ACCORDANCE WITH THE PROVISIONS OF T52 SECTION ~~xxxx~~ 8908 VSA AND AMENDMENTS, IF ANY, THAT YOUR VERMONT OPERATOR'S LICENSE AND/OR PRIVILEGE OF OPERATING ANY MOTOR VEHICLE IN THE STATE OF VERMONT

IS HEREBY SUSPENDED EFFECTIVE JANUARY 15, 1973, INDEFINITELY,
TO REMAIN IN EFFECT UNTIL SUCH TIME AS YOU RECEIVE PROPER NOTICE, IN WRITING, FROM THIS DEPARTMENT, OF YOUR REINSTATEMENT.

ANY VERMONT OPERATOR'S LICENSE OR LEARNER'S PERMIT NOW HELD BY YOU MUST BE RETURNED IMMEDIATELY AFTER THIS ORDER BECOMES EFFECTIVE TO THE DEPARTMENT OF MOTOR VEHICLES, MONTPELIER, VERMONT 05602.

YOU SHALL NOT, UNDER ANY CIRCUMSTANCES, EVEN WHEN ACCOMPANIED BY A LICENSED OPERATOR, OPERATE OR ATTEMPT TO OPERATE A MOTOR VEHICLE IN VERMONT SO LONG AS THIS SUSPENSION IS IN FORCE.

FIFTEENTH
DATED AT MONTPELIER, VT., THIS ~~XXXXXXX~~ DAY OF JANUARY, 1973.
J. E. MALLOY, COMMISSIONER OF MOTOR VEHICLES

CERTIFIED MAIL

J. E. Malloy

, DIRECTOR OF DRIVER IMPROVEMENT

IF YOU ARE NOW REQUIRED TO FILE FINANCIAL RESPONSIBILITY INSURANCE WITH THIS DEPARTMENT, THIS SUSPENSION WILL EXTEND YOUR PERIOD OF FILING.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

JEROME J. WELLS,
Plaintiff
On his own behalf and
on behalf of all those
similarly situated,

vs.

JAMES E. MALLOY,
Commissioner of
Motor Vehicles of the
State of Vermont,
Defendant

CIVIL ACTION NO. 73-30

MOTION FOR TEMPORARY RESTRAINING ORDER

Upon the verified complaint herein, plaintiff, by his attorney, respectfully moves this Court issue an Order directing defendant to restore to plaintiff his Vermont motor vehicle driver's license and the rights attendant thereto.

ALL UNTIL FURTHER ORDER OF THIS COURT.

DATED: January 24, 1973.

/s/ Roger E. Kohn

ROGER E. KOHN
Vermont Legal Aid, Inc.
192 Bank Street - Box 562
Burlington, Vermont

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

| | | |
|-----------------------|---|-----------------------------|
| JEROME J. WELLS, | : | |
| Plaintiff | : | CIVIL ACTION FILE NO. _____ |
| | : | |
| v. | : | |
| | : | |
| JAMES E. MALLOY, | : | |
| Commissioner of Motor | : | |
| Vehicles, | : | |
| Defendant | : | |

STIPULATION

Plaintiff, by his attorney, Roger E. Kohn, and defendant, by his attorney, Kimberly B. Cheney, the Attorney General of the State of Vermont, hereby agree and stipulate as follows:

1. The plaintiff's right to operate a motor vehicle within the State of Vermont has been suspended;
2. Defendant has no objection to the entry of an order directing defendant to restore plaintiff's right to operate a motor vehicle, and the privileges attendant thereto; said order to remain in effect until further order of this Court.

January 31, 1973

/s/ Roger E. Kohn
ROGER E. KOHN
Vermont Legal Aid, Inc.
Attorney for Plaintiff
192 Bank Street - Box 562
Burlington, Vermont

January 26, 1973

KIMBERLY B. CHENEY
Attorney General

By:

/s/ Martin K. Miller
Deputy Attorney General
Attorney for Defendant
Pavilion Office Building
109 State Street
Montpelier, Vermont
Tel: 828-3171

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

| | | |
|--------------------------|---|------------------------|
| JEROME J. WELLS, ET AL., |) | |
| Plaintiff |) | |
| |) | |
| vs. |) | CIVIL ACTION NO. 73-30 |
| |) | |
| JAMES E. MALLOY, |) | |
| Commissioner of Motor |) | |
| Vehicles of the |) | |
| State of Vermont, |) | |
| Defendant |) | |

TEMPORARY RESTRAINING ORDER

Jerome J. Wells, plaintiff in the above-entitled matter, having filed an application for a temporary restraining order, it appearing from the plaintiff's complaint, the motion for a temporary restraining order and the stipulation filed January 31, 1973 by counsel for the plaintiff and counsel for the defendant that plaintiff will suffer immediate and irreparable harm in that he will be unable to visit the doctor, shop for groceries, and obtain other necessities and amenities of daily life without substantial hardship if defendant, his agents or employees continue to withhold plaintiff's license to operate a motor vehicle in the State of Vermont in accordance with the provisions of 32 V.S.A. § 8909; and it appearing that plaintiff has demonstrated that his claim that the taking of his operator's license solely for failure to pay the Vermont Purchase and Use Tax due pursuant to 32 V.S.A. § 8901 et seq., denies him equal protection of law has a reasonable chance of probable success; and it further appearing that defendant's counsel has entered into a stipulation providing that a temporary restraining

order should issue to continue in force until a decision is reached on the merits of plaintiff's claim or to remain in effect until further order of the Court,

WHEREFORE, in accordance with the stipulation of the parties filed January 31, 1973, it is ORDERED AND ADJUDGED:

That the defendant, James E. Malloy, his agents and employees are temporarily restrained from continuing to suspend and withhold Jerome J. Wells' motor vehicle operator's license pursuant to the provisions of 32 V.S.A. § 8909.

DATED at Burlington in the District of Vermont, this 6th day of February, 1973.

/s/ Albert W. Coffrin
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

| | | |
|--------------------------|---|------------------------|
| JEROME J. WELLS, ET AL., |) | |
| Plaintiff |) | |
| |) | |
| vs. |) | CIVIL ACTION NO. 73-30 |
| |) | |
| JAMES E. MALLOY, |) | |
| Commissioner of Motor |) | |
| Vehicles of the State |) | |
| of Vermont, |) | |
| Defendant |) | |

ANSWER

Now comes the Defendant through his attorney, Richard M. Finn, Assistant Attorney General, and hereby answers the Complaint as follows:

II. Jurisdiction

The Defendant denies the allegations in paragraphs No. 1 and 2 of said Complaint and further avers that said Complaint fails to state a claim against the Defendant because no rights, privileges, or immunities within the meaning of 42 U.S.C. Sec. 1983 or 28 U.S.C. Sec. 1343 and Sec. 1331 are involved in this action and the amount in controversy does not exceed the sum of \$10,000.

III. Parties

The Defendant admits the allegations contained in paragraph No. 3 of said Complaint.

The Defendant denies the allegations contained in paragraph No. 4 of said Complaint. The Stipulation between the parties dated March 7, 1973 provides in paragraph No. 1 that the Plaintiff withdraws the class action allegations.

The Defendant admits the allegations contained in paragraph No. 5 of said Complaint insofar as they relate to the duties of the Commissioner of Motor Vehicles.

IV. Claim

The Defendant is without sufficient information to ascertain the correctness of the allegations contained in paragraphs No. 6 through No. 9, of said Complaint and therefore denies the same.

The Defendant denies the allegations contained in paragraph No. 10 of said Complaint.

V. Three-Judge Court

The Defendant objects to the convening of a three-judge court and avers that 32 V.S.A. Section 8909 is not unconstitutional.

VI. Relief Requested

The Defendant denies that the Plaintiff is entitled to the relief requested in said Complaint. ,

WHEREFORE, Defendant respectfully requests this Honorable Court to dismiss Plaintiff's Complaint as it fails to state a cause of action upon which relief can be granted.

Dated at Montpelier, County of Washington, State of Vermont, this 7th day of March, 1973.

KIMBERLY B. CHENEY
Attorney General

By: /s/ Richard M. Finn
Richard M. Finn
Assistant Attorney General

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

| | | |
|--------------------------|---|------------------------|
| JEROME J. WELLS, ET AL., |) | |
| Plaintiff |) | |
| |) | |
| vs. |) | CIVIL ACTION NO. 73-30 |
| |) | |
| JAMES E. MALLOY, |) | |
| Commissioner of Motor |) | |
| Vehicles of the |) | |
| State of Vermont, |) | |
| Defendant |) | |

STIPULATION

The parties to this action, by and through their attorneys, mutually agree and stipulate as follows:

1. Plaintiff hereby withdraws the class action allegations of his complaint, and agrees not to seek to maintain this action as a class action.
2. Defendant hereby agrees that he will extend to all persons in the State of Vermont who have had their licenses suspended solely for failure to pay a Vermont Motor Vehicle Purchase and Use Tax any relief which the Court orders for the named plaintiff in this action, in conformity with the reasoning of the Court's opinion.
3. Defendant hereby stipulates that he will raise no objection to the entry of an order directing defendant to restore the right to operate a motor vehicle, and the rights attendant thereto, until further order of the Court, of any individual who had his license suspended solely for failure to pay a Vermont Motor Vehicle Purchase and Use Tax and who seeks to intervene in this action; nor will defendant oppose the intervention of such an individual.

February 27, 1973

JEROME J. WELLS

BY /s/ Roger E. Kohn
ROGER E. KOHN
VILLA & KOHN
P.O. Box 136
Hinesburg, Vermont 05461

ATTORNEYS FOR PLAINTIFF

March 7, 1973

JAMES E. MALLOY

BY /s/ Richard M. Finn
Assistant Attorney General
Office of the Attorney General
Montpelier, Vermont

ATTORNEY FOR DEFENDANT

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Jerome J. Wells, on his own :
behalf and on behalf of all :
those similarly situated :

and :

Frances Barbeau, Edward A. :
Sweetser, David N. O'Connell, :
Conrad Moore, Walter Holmes, :
Laura May Noyes, Robert Lee :
Booth, Shirley A. Marsha :
and Raymond Chester :
Lucas, Jr., :
Intervening Plaintiffs :

CIVIL ACTION FILE NO.73-30

v. :

James E. Malloy, :
Commissioner of Motor :
Vehicles of the State :
of Vermont :

OPINION AND ORDER

Plaintiff alleges that his right to operate a motor vehicle within the State of Vermont has been suspended solely because he has failed to pay to the State a tax due under the Vermont Motor Vehicle Purchase and Use Tax, 32 V.S.A. §§ 8901-8915 (Supp. 1973). Plaintiff does not dispute that the tax is owing in the amount demanded by the State, but claims that the statutory provisions deny him, and others similarly situated, the equal protection of the laws, in that he is financially unable to pay the Purchase and Use Tax and yet require his operator's license to obtain necessities of life. It is plaintiff's claim that the statute providing for suspension of the operator's license for failure to pay the Purchase and Use Tax, 32 V.S.A. § 8909, ^{1/} is

unconstitutional in that there is no rational relation between the statute and the legislative purpose, nor can the State show a compelling interest for suspending an operator's license when the Purchase and Use Tax is not paid.

Plaintiff claims that this Court is vested with jurisdiction by virtue of 28 U.S.C. § 1343(3)^{2/} and 28 U.S.C. § 1331(a).^{3/} He seeks to maintain this action as a class action, to have a three-judge district court convened pursuant to 28 U.S.C. §§ 2281 and 2284, and to have this Court declare 32 V.S.A. § 8909 unconstitutional. He asks the Court to issue preliminary and permanent injunctions requiring defendant to restore plaintiff's operator's license. Nine additional plaintiffs have been allowed to intervene upon the granting of their motions for leave to so do. Defendant, the Vermont Commissioner of Motor Vehicles, challenges the jurisdiction of this Court to entertain the claims and has moved to dismiss for lack of subject matter jurisdiction relying on 28 U.S.C. § 1341.^{4/} A single judge may decide whether this court has the necessary jurisdiction to entertain a matter requiring a three judge panel. Ex parte Poresky, 290 U.S. 30, 31-32 (1933); Hickmann v. Wujick, 333 F. Supp. 1221 (E.D.N.Y. 1971), aff'd 488 F.2d 895 (2d Cir. 1973).

Were it not for the existence of 28 U.S.C. § 1341, it is clear that jurisdiction over the subject matter of this controversy would be conferred upon this court by virtue of 28 U.S.C. § 1343(3). However, the mandate of § 1341 is

clear--this court shall not, where a plain, speedy, and efficient remedy may be had in State Court, enjoin, suspend or restrain the assessment, levy or collection of any tax under State law.^{5/}

Our inquiry as to the effect of § 1341 consists of three questions. First, does this action involve the assessment, levy, or collection of a state tax; secondly, what is the nature of the relief that the plaintiff seeks; and finally, whether there is a plain, speedy and efficient remedy available in the Vermont Courts.

Taking up these questions in inverse order, we think it is clear that there is a plain, speedy and efficient remedy in the State courts. Plaintiff could bring an action in the County Court seeking the same declaratory and injunctive relief he seeks in this Court. 12 V.S.A. § 4711; V.R.C.P. 65; Graves v. Town of Waitsfield, 130 Vt. 292 (1972). In Graves, the Vermont Supreme Court held that injunctive relief could be granted in a declaratory judgment action. The answer to the second question is obvious from the face of the complaint and the discussion above--plaintiff is seeking a declaration that 32 V.S.A. § 8909 is unconstitutional and requests an injunction requiring defendant to restore his operator's license. If the relief requested is granted it is clear that the operation of 32 V.S.A. § 8909 will be suspended.

With regard to the question of whether this action involves the assessment, levy, or collection of a state tax,

plaintiff claims that the challenged section is not a "collection" of the tax as mentioned in § 1341, but only an aid to collection or a means of collection. Plaintiff claims that § 1341 is intended for situations where the challenge is to the tax itself or to the propriety of its assessment. However, in our view this is a mere play on words and in fact "collection" and "enforcement" are so intertwined inextricably with one another that we would be required to draw an impossible distinction between the means and the end of the tax collection process in order to accept the plaintiff's contention in this regard. Section 8909 is found in Chapter 219 of Title 32 of the Vermont Statutes Annotated. Title 32 is entitled Taxation and Finance, Chapter 219 is entitled Motor Vehicle Purchase and Use Tax, and § 8909 is entitled Enforcement. In addition, § 8905 of Chapter 21 of Title 32 is entitled Collection.^{6/} Subsection (c) of § 8905 provides for a monetary penalty for failure to make timely payment of the tax when due. It is our belief that § 8909 cannot be isolated from the other provisions of Chapter 219 of Title 32 and the section involves the collection of the Motor Vehicle Purchase and Use Tax quite as much as the penalty provided in § 8905(c). We think it is clear that § 8909 is directly a part of the collection of the Motor Vehicle Purchase and Use Tax and even if it be characterized as a means or an aid to collection it clearly falls within the context of § 1341 which deprives this court of jurisdiction to hear this matter.

The Second Circuit said in American Commuters Association, Inc. v. Levitt, 405 F.2d -148 (1969):

[W]hen there are adequate State remedies available, § 1341 means that it so plainly says and that federal jurisdiction is still precluded by it.

405 F.2d at 1151.

The plaintiffs in American Commuters had sought to base jurisdiction of the action on 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983.

Plaintiff points out that subsequent to the decision in American Commuters, the Supreme Court decided Mitchum v. Foster, 407 U.S. 225 (1972), holding thereby that 42 U.S.C. § 1983 is within the exception of the federal anti-injunction statute, 28 U.S.C. § 2283, which provides that a federal court may not enjoin state court proceedings "except as expressly authorized by Act of Congress." We believe the Supreme Court's decision in Mitchum v. Foster is inapplicable to this motion to dismiss based on 28 U.S.C. § 1341, since § 1341 contains no exception for suits authorized by Act of Congress as does 28 U.S.C. § 2283. Indeed, § 1341 allows no exceptions of any sort where a plain, speedy and efficient remedy exists in the state courts.

Subsequent to the Supreme Court's decision in Mitchum v. Foster, the Second Circuit has held that basing a complaint for school tax relief upon an alleged violation of the Civil Rights Act or of the Federal Constitution will not avoid prohibition of 28 U.S.C. § 1341. Hickmann v. Wujick, 488 F.2d 875 (2d Cir. 1973).

Section 1341 also precludes the granting of a

declaratory judgment when the State remedy is plain, speedy and efficient. Hickmann v. Wujick, 333 F. Supp. 1221 (E.D. N.Y. 1971), aff'd 488 F.2d 875 (2d Cir. 1973); City of Houston v. Standard-Triumph Motor Co., 347 F.2d 194 (5th Cir. 1965); Wyandotte Chemicals Corp. v. City of Wyandotte, 321 F.2d 927 (6th Cir. 1963).

We are satisfied that a State court is the proper forum in which the plaintiff should seek his remedy. As stated by the Supreme Court in Matthews v. Rogers, 248 U.S. 521, 525 (1932):

Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the complaint may be brought to this Court for review if any federal question be involved7/

WHEREFORE, the motion of defendant Malloy is granted and the plaintiff's complaint and those of the intervenors are hereby dismissed and the Temporary Restraining Orders are hereby dissolved.

Dated at Burlington in the District of Vermont, this 1st day of July, 1974.

/s/ Albert W. Coffrin
District Judge

FOOTNOTES

- 1/ 32 V.S.A. § 8909 provides as follows:

If the tax due under subsections (a) and (b) of section 8903 of this title is not paid as hereinbefore provided the commissioner shall suspend such purchaser's right to operate a motor vehicle within the state of Vermont until such tax is paid, and such tax may be recovered with costs in an action brought in the name of the state on this statute.

- 2/ 28 U.S.C. § 1343(3) provides as follows:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

* * *

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or of any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

- 3/ 28 U.S.C. § 1331(a) provides as follows:

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000 exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

- 4/ 28 U.S.C. § 1341 provides as follows:

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

- 5/ Neither the judicial decisions nor § 1341 require that the state remedy be the best remedy available or even equal to or better than the remedy which might be available in the Federal Courts. Bland v. McHann, 463 F.2d 21 (5th Cir. 1972).

- 6/ 32 V.S.A. § 8905 provides as follows:

(a) Every purchaser of a motor vehicle subject to a tax under subsection (2) of section 8903 of

this title shall forward such tax form to the commissioner, together with the amount of tax due, within thirty days of the time of first registering or transferring a registration to such motor vehicle.

(b) Every person subject to a use tax under subsection (b) of section 8903 of this title shall forward such tax form and the tax due to the commissioner with the registration application or transfer, as the case may be, and fee at the time of first registering or transferring a registration to such motor vehicle as a condition precedent to registration thereof.

(c) If the tax due under subsections (2) and (b) of this section is not paid as provided, a penalty of an additional one per cent of taxable cost of \$150.00 whichever is smaller.

7/ Quoted in American Commuters Ass'n., Inc. v. Levitt,
405 F.2d 1148, 1151 (2d Cir. 1969).

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JEROME J. WELLS, ET AL., :
 :
 : CIVIL ACTION FILE NO. 73-30
 :
 :
JAMES E. MALLOY, :
COMMISSIONER OF MOTOR :
VEHICLES OF THE STATE :
OF VERMONT :

NOTICE OF APPEAL

Notice is hereby given that plaintiff in the above action, and all intervening plaintiffs, hereby appeal to the United States Court of Appeals for the Second Circuit from the order dismissing plaintiff's complaint and the complaints of intervenors, and dissolving the temporary restraining orders, which order was entered in this action on the 1st day of July, 1974.

Dated this 29th day of July, 1974.

/s/ Roger E. Kohn

ROGER E. KOHN
P.O. Box 136
Hinesburg, Vermont 05461
ATTORNEY FOR PLAINTIFF

/s/ William A. Dalton

Vermont Legal Aid, Inc.
ATTORNEYS FOR INTERVENING
PLAINTIFFS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 502—September Term, 1974.

(Argued January 13, 1975 Decided January 23, 1975.)

Docket No. 74-2067

JEROME J. WELLS, EDWARD A. SWEETSER, FRANCES M. BAR-
BEAU, WALTER HOLMES, CONRAD MOORE, DAVID N. O'CON-
NELL, LAURA MAY NOYES, RONALD MILES MAGONI, SHIRLEY
A. MARSH, ROBERT LEE BOOTH, RAYMOND CHESTER LUCAS,
JR.,

Appellants,

v.

JAMES E. MALLOY, Commissioner of Motor Vehicles
of the State of Vermont,

Appellee.

Before:

LUMBARD, FRIENDLY and GURFEIN,

Circuit Judges.

Appeal from a judgment of the District Court for the District of Vermont, Albert W. Coffrin, *Judge*, which dismissed, on the basis of 28 U.S.C. § 1341, an action under the Civil Rights Act to enjoin the enforcement of a section of the Vermont Motor Vehicle Purchase and Use Tax which directed the Commissioner of Motor Vehicles to suspend the right to operate a motor vehicle of a person in default in payment of the tax.

Reversed and remanded with instructions to request the convening of a three-judge court.

ROGER E. KOHN, Esq., Hinesburg, Vt. (Vermont Legal Aid, Inc., and Michael J. Hertz, Esq., Springfield, Vt., of Counsel), *for Appellants.*

RICHARD M. FINN, Assistant Attorney General, State of Vermont, *for Appellee.*

FRIENDLY, *Circuit Judge:*

This appeal raises a novel question concerning the scope of 28 U.S.C. § 1341. This provides:

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

The action was brought in the District Court for Vermont. Plaintiff Wells claimed that he had failed to pay the taxes due under Vermont's Motor Vehicle Purchase and Use Tax¹ because of financial inability and that, in consequence, the Commissioner of Motor Vehicles had suspended his driver's license under 32 Vt. Stat. Ann. § 8909.² Plaintiff did not dispute that the tax was due and owing but claimed he was unable to pay, and that he needed his driver's license "to visit the doctor, shop for groceries, and for other necessities and amenities of

¹ 32 Vt. Stat. Ann. § 8903. This provision imposes upon Vermont residents a tax on the purchase and use of motor vehicles.

² If the tax due under . . . section 8902 of this title is not paid as hereinbefore provided the commissioner shall suspend such purchaser's right to operate a motor vehicle within the state of Vermont until such tax is paid

daily life," that no other member of his family residing with him had a driver's license, and that the suspension was causing him "tremendous hardship, and irreparable and immediate harm." He alleged that the classification of motor vehicle operators on the basis of their liability for payment of a purchase and use tax violated the Equal Protection Clause of the Fourteenth Amendment. Plaintiff moved that a three-judge court be convened pursuant to 28 U.S.C. §§ 2281 and 2284.³ The district judge did not reach that question since he held that maintenance of the action was barred by 28 U.S.C. § 1341 and accordingly dismissed the complaint for want of jurisdiction.⁴

A few points can be cleared away at the outset. Plaintiff does not seriously dispute the judge's conclusion that, as required by 28 U.S.C. § 1341, "a plain, speedy and efficient remedy may be had in the courts" of Vermont. See 1st Vt. Stat. Ann. § 4711 (authorizing declaratory relief), V.R.C.P. 65 (authorizing issuance of temporary restraining orders and injunctions); *Graves v. Town of Waitsfield*, 130 Vt. 292, 292 A.2d 247 (1972). There is no exemption from the anti-injunction act relating to state

3 Although the complaint had originally sought to maintain the action on behalf of "all persons in the State of Vermont who have had their license [sic] suspended for failure to pay a Vermont Motor Vehicle Purchase and Use Tax," it was later stipulated that plaintiff would withdraw his class action allegations, that the Commissioner would extend to all persons similarly situated the same relief as the court might decree in favor of plaintiff, and that the Commissioner would not object to an order directing him to restore the driving licenses of plaintiff and all intervenors whose driver's licenses had been suspended for the same reason (whose intervention the Commissioner would not oppose) until further order of the court. Similar statesmanship by plaintiffs' lawyers and government counsel would avoid much useless bickering over class action designation in cases where a plaintiff seeks declaratory or injunctive relief against state or federal officials.

4 We note in passing that this issue was appropriate for resolution by the single judge and, accordingly, that appeal lies to this court and not directly to the Supreme Court. *Gonzales v. Automatic Employees Credit Union*, 43 U.S.L.W. 4025 (U.S. Dec. 19, 1974).

taxes, 28 U.S.C. § 1341, such as there is in the general statute against enjoining state court proceedings, 28 U.S.C. § 2283, for instances where an injunction is "expressly authorized by an Act of Congress", e.g., the Civil Rights Act, 42 U.S.C. § 1983, and its jurisdictional implementation, 28 U.S.C. § 1343(3), see *Mitchum v. Foster*, 407 U.S. 225 (1972). We have thus held, both before *Mitchum*, *American Commuters Ass'n, Inc. v. Levitt*, 405 F.2d 1148 (2 Cir. 1969), and thereafter, *Hickmann v. Wujick*, 488 F.2d 875, 876 (2 Cir. 1973), that invocation of the Civil Rights Act does not suffice to create an exemption from 28 U.S.C. § 1341. Indeed, many of the actions at which the state tax injunction was deliberately aimed raised constitutional claims of the sort now held to be embraced by the Civil Rights Act, *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1972). See also *id.* at 542 n.6. Finally, plaintiff derives no benefit from *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966), invalidating Virginia's poll tax, since the defendants in that case had not raised the issue of the applicability of the state tax injunction act, and neither the majority nor the minority opinions advert to it.

Despite these considerations which might be thought to point to affirmance, we take a different view. Clearly plaintiff Wells is not seeking to restrain the "assessment" or "levy" of a tax under state law. The state's claim, sustained by the court below, is that he is seeking to restrain its "collection". We are not impressed by Wells' argument that he is not seeking to restrain collection because he cannot pay the tax, whatever Vermont may say; doubtless the state believed that the sanction of revocation of a driver's license, like the older method of imprisonment for debt, might cause some money to be produced from somewhere, despite a taxpayer's protest that he has none. "Collection", of course, could be read broadly to include

anything that a state has determined to be a likely method of securing payment, and the district court reasoned that "collection" and "enforcement" are so intertwined inextricably with one another that we would be required to draw an impossible distinction between the means and the end of the tax collection process in order to accept plaintiff's contention in this regard." We do not believe, however, that Congress intended to go so far. The context and the legislative history, see H.R. Rep. No. 1503, 75th Cong., 1st Sess. 2 (1937); Sen. Rep. No. 1035, 75th Cong., 1st Sess. 1-2 (1937); 81 Cong. Rec. 1415, 1416 (Feb. 19, 1937) (remarks of Sen. Bone), lead us to conclude that, in speaking of "collection", Congress was referring to methods similar to assessment and levy, *e.g.*, distress or execution, compare *Murray's Lessee v. Hoboken Land and Improvement Co.*, 18 How. (59 U.S.) 272, 278 (1856); *Damsky v. Zavatt*, 289 F.2d 50-51 (2 Cir. 1961), that would produce money or other property directly, rather than indirectly through a more general use of coercive power. Congress was thinking of cases where taxpayers were repeatedly using the federal courts to raise questions of state or federal law going to the validity of the particular taxes imposed upon them⁵—not to a case where a taxpayer

⁵ See Sen. Rep., *supra*, at 2:

The existing practice of the Federal courts in entertaining tax-injunction suits against State officers makes it possible for foreign corporations doing business in such States to withhold from them and their governmental subdivisions, taxes in such vast amounts and for such long periods of time as to seriously disrupt State and county finances. The pressing needs of these States for this tax money is so great that in many instances they have been compelled to compromise these suits, as a result of which substantial portions of the tax have been lost to the States without a judicial examination into the real merits of the controversy.

Especially pertinent is a letter by an assistant attorney general of the State of Washington and introduced into the Congressional Record by a sponsor of what is now § 1341, in which there is detailed the history

contended that an unusual sanction for non-payment of a tax admittedly due violated his constitutional rights, an issue which, once determined, would be determined for him and all others.

In the interests of judicial economy we add that, under the test laid down in *Goosby v. Osser*, 409 U.S. 512, 518 (1973), the district judge should request the convening of a three-judge court, as he apparently would have done but for his views with respect to the prohibition of 28 U.S.C. § 1341. Although *United States v. Kras*, 409 U.S. 434 (1973), provides substantial support to the state's position, it does not "inescapably render the claims frivolous," the test laid down in *Goosby v. Osser, supra*.

Reversed and remanded with instructions to request the convening of a three-judge court. We understand the restraining order and the stipulation of counsel, see fn. 3, will continue in effect pending decision by the three-judge court.

of litigation between railroads operating in that state and counties with respect to property taxes. The assistant attorney general noted that the railroads sued in federal courts on an annual basis to restrain collection of the taxes and tied up the collection process for years. 81 Cong. Rec. 1416 (Feb. 19, 1937).

COPY

United States Court of Appeals

FOR THE
SECOND CIRCUIT

CIV.
73-30

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the ~~twenty-third~~ day of January one thousand nine hundred and seventy-five.

Present: HON. J. EDWARD LUMBARD

HON. HENRY J. FRIENDLY

HON. MURRAY I. GURFEIN

Circuit Judges,

Jerome J. Wells, on his own behalf and on behalf of all those similarly situated, Intervening Plaintiffs; Edward A. Sweetser, Francesm. Barbeau, Walter Holmes, Conrad Moore, David N. O'Connell, Laura May Noyes, Ronald Miles Magoni, Shirley A. Marsh, Robert Lee Booth, Raymond Chester Lucas, Jr.

Plaintiffs-Appellants

v.

James E. Malloy, Commissioner of Motor Vehicles of the State of Vermont.
Defendants-Appellees.

Appeal from the United States District Court for the District of Vermont

This cause came on to be heard on the transcript of record from the United States District Court for the District of Vermont, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed and that the action be and it hereby is remanded for further proceedings in accordance with the opinion of this court with costs to be taxed against the appellee.

A. DANIEL FUSARO
Clerk

By Vincent A. Carlin
Chief Deputy Clerk

(A true copy,

A. Daniel Fusaro
Clerk
Vincent A. Carlin
Chief Deputy Clerk

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED
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CLERK
DEPUTY CLERK

74-2067

74

FOR THE
DISTRICT OF VERMONT

JEROME J. WELLS, et al

vs

JAMES E. HALLOY, Commissioner
of Motor Vehicles of the State
of Vermont

Civil Action No: 73-30

STIPULATION

Plaintiffs and defendant hereby stipulate and agree that plaintiff Jerome J. Wells may amend his complaint by eliminating section V thereof, which requests the convention of a three judge court, and by changing VI thereof to read as follows:

VI. RELIEF REQUESTED

Wherefore plaintiff prays the Court:

- (1) To declare unconstitutional so much of 32 V.S.A. 5890 as requires the Commissioner of Motor Vehicles to suspend motor vehicle operators' licenses for failure to pay the Vermont Purchase and Use Tax;
- (2) To continue during the pendency of this action the restraining orders which have been issued herein;
- (3) To order such further relief as is appropriate and just.

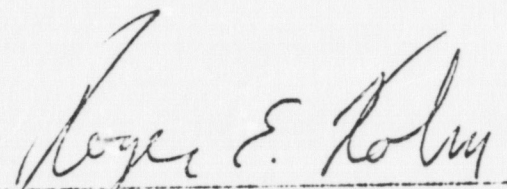
The parties stipulate that intervening plaintiffs may amend their complaints in accordance with the amendment requested by plaintiff Wells.

The parties further stipulate and agree that defendant will administer 32 V.S.A. 53909 in accordance with any declaratory judgment issued in this action, and that defendant will restore the right to operate a motor vehicle, and the rights attendant

thereto, of any individual referred to in paragraph 3 of the stipulation of the parties dated February 27, 1973 and March 7, 1973 on file in this action. without requiring such individuals to formally intervene in this action.

This stipulation supercedes the previous stipulation of the parties, dated February 10, 1975, which previous stipulation erroneously failed to set forth the amendment to the complaint of plaintiff Wells.

Dated as of March 4, 1975.



Roger E. Kohn, Esq.,
P. O. Box 136
Winoosburg, Vermont 05461

Attorney for Plaintiff Wells

s/

Vermont Legal Aid, Inc.,
Attorneys for Intervening
Plaintiffs

s/ Richard M. Finn

Richard M. Finn, Esq.,
Assistant Attorney General
Office of the Attorney General
Montpelier, Vermont 05602

Attorney for Defendant

-40-
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JEROME J. WELLS, et al

vs

JAMES E. MALLOY, Commissioner
of Motor Vehicles for the
State of Vermont

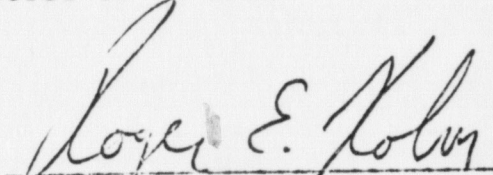
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73-30

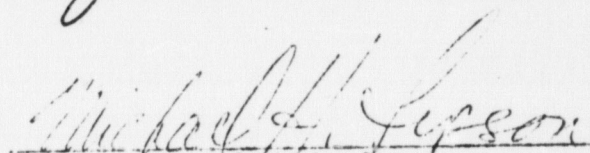
STIPULATION

Plaintiffs and defendant hereby stipulate and agree that, for the purposes of determining the constitutionality of the Vermont Statutes challenged by plaintiffs, pursuant to plaintiffs' motion for summary judgment, the facts alleged by plaintiff Jerome Wells in his complaint, and alleged by intervening plaintiffs in their complaints, may be considered to be true.

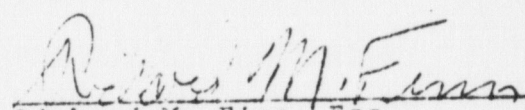
Dated: March 27, 1975


Roger E. Kohn, Esq.,
Attorney for Plaintiff Jerome Wells

Dated: April 11, 1975


Michael H. Lippson,
Vermont Legal Aid, Inc.,
Attorney for Intervening Plaintiffs

Dated: April 11, 1975


Richard M. Finn, Esq.,
Assistant Attorney General
Attorney for Defendant

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JEROME J. WELLS, et al

vs

JAMES E. HALLBY, Commissioner
of Motor Vehicles for the
State of Vermont

Civil Action File No:

73-30

MOTION FOR SUMMARY JUDGMENT

Plaintiffs hereby move for summary judgment in this action.

Dated: April 25, 1975

Loyle E. Kohn

ROGER E. KOHN, ESQ.,
P.O. Box 136
Windsburg, Vermont 05461

Attorney for Plaintiff Jerome Wells

Dated: April 25, 1975

S/ JOHN A. Doolley III

VERMONT LEGAL AID, INC.,
Attorney for Intervening Plaintiff

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Jerome J. Wells :

and :

Edward A. Sweetser, Frances M. :
Barbeau, David N. O'Connell, :
Conrad Moore, Walter Holmes, :
Laura May Noyes, Ronald Miles :
Magoni, Robert Lee Booth, :
Shirley A. Marsh, and :
Raymond Chester Lucas, Jr., :

Intervening Plaintiffs :

v. :

James E. Malloy, Commissioner :
of Motor Vehicles of the State :
of Vermont :

Civil Action

File No. 73-30

Roger E. Kohn, Esq., Hinesburg, Vermont,
and Michael Hertz, Esq., Vermont Legal Aid,
Inc., Springfield, Vermont, for plaintiffs.

Richard M. Finn, Esq., Assistant Attorney
General, Montpelier, Vermont, for defendant.

COFFRIN, District Judge.

This lawsuit involves the Vermont Motor Vehicle Purchase and Use Tax, 32 V.S.A. § 8901 et seq. Vermont levies a tax of four percent of the taxable cost of a motor vehicle purchased in Vermont by a resident, or, alternatively, four percent of the average book value of a vehicle at the time it is first registered in the State or transferred to a new owner, up to a maximum tax of \$300.00. 32 V.S.A. §§ 8903, 8907. If the tax is not paid within 30 days of the date the automobile is registered, a penalty of one percent of the taxable cost

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but in no event to exceed \$150.00 is imposed. 32 V.S.A. § 8905(c)(Supp. 1975). In addition to the penalty, the Commissioner of Motor Vehicles suspends the purchaser's right to operate a motor vehicle in Vermont until the tax is paid. 32 V.S.A. § 8909.^{1/}

Plaintiff Wells did not pay the tax imposed by § 8903 because he was unable to do so. Consequently, his right to drive was suspended by the Commissioner of Motor Vehicles, but Wells still needs to be able to drive to visit the doctor, shop for groceries, and attend to other details of daily life. No other member of his household holds a driver's license.

Wells brought this suit to obtain a declaration that the suspension provision of § 8909 is unconstitutional and an order that the Commissioner reinstate his driving privilege. Since the lawsuit was filed, other victims of § 8909 have intervened as plaintiffs. We granted temporary relief pending resolution of plaintiffs' claim that they have been denied equal protection of the law.

The action is based on 42 U.S.C. § 1983, and we have jurisdiction over such claims by virtue of 28 U.S.C. § 1343. This suit is not barred by 28 U.S.C. § 1341 which concerns injunctions against the assessment, levy, or collection of state taxes. See Wells v. Malloy, 510 F.2d 74 (2d Cir. 1975).

Originally it appeared that a three-judge court would have to be convened to determine the merits of plaintiffs' claim because the complaint sought injunctive relief against a statute of statewide application, 28 U.S.C. § 2281. It now appears, however, that this cumbersome procedure is not necessary because plaintiffs and defendant commendably have

entered into a stipulation which permitted Wells to amend his complaint to omit any request for injunctive relief, and the defendant in turn has agreed to administer § 8909 in accordance with any declaratory judgment we may issue. Since the plaintiffs do not request injunctive relief nor is such relief contemplated, we may proceed to the merits of the constitutional claim. Kennedy v. Mendoza-Martinez, 372 U.S. 144, 155 (1963). The case is before us at this time on cross motions for summary judgment since the facts are not in dispute. Fed. R. Civ. P. 56.

A. Equal Protection

Plaintiffs claim that § 8909 sets up two classes: people who owe a Purchase and Use Tax assessment to the State, and people who do not. The Commissioner of Motor Vehicles is required to suspend the driving privilege of any person who owes but has not paid the tax. Plaintiffs argue that Vermont must demonstrate some compelling state interest to justify suspending the right to drive solely for the reason that an individual has not paid this tax. They also argue that even if strict scrutiny is not appropriate in this instance there is still no rational basis for the suspension since payment or nonpayment has nothing whatsoever to do with an individual's ability to drive carefully and safely.

At the outset we must decide whether or not to apply the strict equal protection test. Where a statute burdens a fundamental right or draws a suspect classification, it must be able to withstand strict scrutiny in order to survive an equal protection challenge. In this instance there is no fundamental right. Although a driver's license is an

important property right in this age of the automobile, it does not follow that the right to drive is fundamental in the constitutional sense. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 30-34 (1973). Bell v. Burson, 402 U.S. 535 (1971), is not to the contrary. Bell only holds that the right to drive cannot be taken away without procedural due process of law. Since there is no fundamental right to drive, the strict test only applies if the statute draws a suspect classification based on race, nationality, or alienage. United States v. Kras, 409 U.S. 434, 446 (1973). Clearly § 8909 draws no suspect classification along such lines.

Plaintiffs cite two cases from this district as authority for the proposition that the strict test should apply where suspension of the right to drive is at stake. Miller v. Malloy, 343 F. Supp. 46 (D. Vt. 1972); Wright v. Malloy, 373 F. Supp. 1011 (D. Vt. 1974), aff'd, 419 U.S. 987 (1974). Miller involved suspension of a driver's license pursuant to 23 V.S.A. § 801(a)(1)(D) which requires a person convicted of "operating, taking, using or removing a motor vehicle without the consent of the owner" to furnish proof of financial responsibility at the peril of losing his license. The court decided that it had to find a compelling state interest in order to justify the suspension because the cumulative effect on plaintiff's liberty and right to travel plus the greater burden on persons of modest means inherent in any state statute that makes a financial demand on its citizens required application of the strict test. The court went on to find a compelling state interest in Vermont's

legitimate concern for the financial security of victims of highway accidents who might be injured bodily or in their property through the carelessness of drivers who had given evidence of an inability to drive safely in the past. In Wright the court did not find it necessary to reexamine the reasoning in Miller, so that case adds little to the present discussion.

After careful consideration, we do not consider that Miller is controlling precedent. In the first place, Miller was decided before San Antonio Independent School District v. Rodriguez, supra, in which the Supreme Court disparaged the argument that a discrimination based on relative wealth was in any way suspect. Wright v. Malloy, supra at 1019. Secondly, we do not find a liberty interest here to the same extent as the court found in Miller. Miller was in jail on an unrelated assault charge. He claimed that if his driving privilege were reinstated he would be able to take advantage of a prison work-release program. Without the right to drive he would have been unable to commute to Waterbury State Hospital where a job awaited him. In contrast to Miller, Wells and all the other plaintiffs in this lawsuit, so far as we know, are able to go freely where they wish, subject only to the limitation that they may not personally operate an automobile. As the court said in Miller, "Vermont may no longer be thought of as having only dirt roads and an inadequate transportation and highway system." Miller v. Malloy, supra at 50. It is certainly possible to get from place to place using public transportation or by taking advantage of the good nature of friends or family members. None of the plaintiffs needs to regain his driving privilege in order to be released from confinement.

The court in Miller based its decision to apply the strict test on the cumulative weight of several arguments. Since one of these arguments has been disparaged by a subsequent decision of the Supreme Court and another does not apply to the facts we have before us to the same extent it did in Miller, we think the controlling factors have been altered to such an extent that the Miller holding should not be considered to apply to the pending case.

Since there is no suspect class and no fundamental right involved in this lawsuit, the applicable standard for measuring the propriety of Vermont's classification is whether there is a rational justification for the lines which have been drawn. United States v. Kras, supra at 446.

The rational basis is readily apparent because the Purchase and Use Tax is a revenue collecting measure and § 8909 is clearly designed to aid in the collection of the tax. Since losing one's right to drive is a great inconvenience the potential loss operates as an incentive to make prompt payment. We do not understand plaintiffs to argue that § 8909 is not effective. To the contrary, the fact that Wells brought this lawsuit indicates that he believes the State's strategy is too effective to ignore. Accordingly, we find there is a rational basis for suspending an individual's right to drive until he has paid any Purchase and Use Tax he may owe.

The thrust of plaintiffs' argument is that § 8909 cannot be justified as an exercise of the police power, but

that argument misses the mark. Section 8909 is justified by Vermont's power to tax which is an inherent attribute of sovereignty. Bode v. Barrett, 344 U.S. 583, 585 (1953). A state may place restrictions on a citizen's right to use his car on public highways for reasons which are not directly related to the health, safety, and welfare of society. See Earnhart v. Heath, 369 F. Supp. 259 (E.D. Ark. 1974); Bieling v. Malloy, 133 Vt. _____, No. 229-74 (Oct. 7, 1975).

Taxing Power

Our inquiry does not end at this point, however, for plaintiffs argue that suspending the right to drive causes personal hardship. They also argue that the legislature should not suspend the right to drive but should instead require payment of the Purchase and Use Tax as a condition precedent to registering a motor vehicle.^{2/} In essence these arguments are perfectly consistent with our conclusion that the collection strategy in § 8909 is rationally related to Vermont's legitimate interest in collecting taxes which the legislature has imposed. Plaintiffs in effect admit that the statute they attack is rational and effective, but even so they argue that suspending the right to drive is beyond the pale of fair and just collection techniques. This argument requires us to determine whether § 8909 transgresses any limits there may be on a state's authority to prescribe methods for collecting the taxes which it has imposed.

The power to tax is an inherent aspect of sovereignty. Bode v. Barrett, supra at 585. Included within

the power to tax is the power to enforce uniformly the collection of a tax by any constitutional means. United States v. Hester, 137 F.2d 145, 147-148 (10th Cir. 1943). The only requirement is that the means used be fair, reasonable, and equitable. Cregue v. Shulterbrandt, 121 F. Supp. 448, 451 (D. V.I. 1954). See also Bieling v. Malloy, supra.

Generally speaking collection strategies are of two kinds. The legislature may provide for a suit to collect a tax or for distraint and sale of a delinquent taxpayer's property. Such collection methods produce revenue directly, in contrast to the collection strategy used here which seeks to coerce payment by suspending a privilege. Vermont gets no revenue from suspending plaintiffs' right to drive, but the inconvenience to the delinquent taxpayer encourages payment of the tax. In addition to direct and indirect collection methods, a legislature may impose a penalty for failure to pay a tax in any amount it sees fit. Bankers Trust Co. v. Blodgett, 260 U.S. 647, 651 (1923). Clearly suspending driving privileges is in one sense a penalty, and conversely, the fear of incurring an additional sum as a fine for late payment of a tax is an incentive to pay promptly. But, though there may be some difficulty in telling the two apart, a distinction can be drawn. In theory a coercive device is only proper to compel payment. Once the tax is paid the pressure should be removed. This is the theory which underlies civil contempt of court. See International

Business Machines Corp. v. United States, 493 F.2d 112, 115 (2d Cir. 1973), cert. denied, 416 U.S. 995 (1974). Section 8909 provides for suspension of driving privileges only so long as the tax remains unpaid. As such it is not like a penalty which would be final and definite once the time for payment had passed.

The fact that plaintiffs are unable to pay the tax does not make a coercive collection method unreasonable. Generally speaking, a coercive strategy is more appropriate where there is a willful refusal rather than a present inability to comply with a legal duty. Although the State may have believed that if the taxpayer could afford the purchase of the car he should be able to afford the tax and a little arm-twisting might cause his delinquency to disappear, we nevertheless are bound by the facts of this case, and we assume that plaintiffs' inability to pay the tax imposed is genuine. Regardless of this, however, plaintiffs' current financial straits may well be temporary. Vermont has a legitimate interest in collecting the tax from assets which plaintiffs may acquire in the future. Perhaps it would be more apt to suspend driving privileges at such time as plaintiffs may acquire the means to pay the tax, yet it is a practical impossibility, not to mention an invasion of privacy, for Vermont to maintain so vigilant a surveillance of plaintiffs' finances. Rather than be a watch dog, Vermont has taken this tack to remind plaintiffs of their continuing obligation. Furthermore, this kind of indirect collection technique may well be the only method which is financially

feasible. The cost of direct collection methods when added to the amount of tax due might exceed the value of plaintiffs' available property. This possibility becomes a probability considering the fact that plaintiffs have been unable to pay even the tax, much less the costs of any collection action. Given the future orientation of § 8909 and the practical shortcomings of direct collection techniques, we cannot say that plaintiffs' present inability to pay makes a suspension of their driving privilege improper.

Plaintiffs also argue that suspending their driving privilege is a particularly coercive remedy in Vermont given its "long winters and deep snows . . .," McNamara v. Malloy, 337 F. Supp. 732, 735 n.7 (D. Vt. 1971), however we do not believe that this collection strategy is so coercive that it can be called arbitrary or unreasonable. Although our research has not uncovered any authority directly on point, it is clear that a state may refuse to register a motor vehicle if the owner has not paid the ad valorem personal property tax on the automobile in question. See State ex rel. Taylor v. Mirabel, 273 P. 928 (N.M. 1928); Mayor and City Council of Baltimore v. Perrin, 12 A.2d 261 (Md. 1940); Earnhart v. Heath, ^{3/}supra. Another case upheld a criminal conviction for violation of former § 3540 of the 1939 Internal Revenue Code which imposed a tax on the use of motor vehicles and made illegal the use of any vehicle to which was not affixed a sticker indicating that the tax had been paid. United States v. Smith, 62 F. Supp. 594 (W.D. Mich. 1945).

In light of these cases, it does not seem that suspending a person's driving privilege is so harsh that it must be considered unreasonable. Plaintiffs argue that losing the right to drive is more disabling than being unable to register a car, but that conclusion does not necessarily follow. Although the plaintiffs cannot drive, under the present state of the law they do have at least one automobile registered and available for use which could be driven for them by others. The issue is really whether it is easier to find someone to drive one's own car if one cannot drive, or to obtain a registered automobile for one's own use if one can drive but has no other car. Seen in this light, we cannot conclude that suspension of driving privileges is any more harsh or coercive than refusal to register a motor vehicle, a collection strategy which has been judicially approved in the past and with which plaintiffs do not quarrel in this instance.

As stated above, plaintiffs suggest that Vermont should refuse to register cars rather than suspend a person's driving privilege if the Purchase and Use Tax has not been paid. This argument has some appeal because registration is the event which triggers the tax in the first instance, and refusal by the State to register an automobile on which the Purchase and Use Tax was outstanding would erase the collection problem entirely. But though this argument is appealing and in fact the legislature has adopted this suggestion, we do not think the present solution is so unjust that we should declare it unreasonable and thus overrule the legislature in the field of taxation, an area

peculiarly suited to legislative accomodations and one in which courts have traditionally walked very softly. San Antonio Independent School District v. Rodriguez, supra at 40-41. Plaintiffs bolster their argument against the current remedy by stating that there is no logical limit to Vermont's power to use the threat of suspension to compel citizens to honor all sorts of obligations, obligations which may be totally unrelated to use of the highways. But we need not decide whether suspending the right to drive would be unreasonable if it were totally unrelated to an undischarged obligation because in this instance the Purchase and Use Tax is closely related to the right to drive. Defendant's counsel advises that the entire amount collected goes into the highway fund and is used to improve the highway system for the benefit of all users of the roads. This is clearly the statutory intent. See 32 V.S.A. § 8901. In light of the purpose to which the tax is put, it is certainly sensible to withdraw a person's driving privilege for failure to pay it. In Earnhart v. Heath, supra, a tax on all personal property was involved, and in addition the bulk of the revenue raised by the assessment went to public education rather than to improve the highways. Even though the tax obligation and the use of the money raised was not closely related to the use of automobiles, the state could still refuse to register motor vehicles to compel payment.

In Bieling v. Malloy, supra, the Supreme Court of the State of Vermont upheld the constitutionality of 23 V.S.A. § 604 which empowers the Commissioner of Motor Vehicles to suspend the motor vehicle operator's license of

those individuals who fail to pay their poll taxes. The poll tax becomes part of the general funds which support all of the local functions of a municipality. As such the use to which the tax is put is far broader in scope and less relevant to motor vehicle operation than the Sales and Use Tax in the instant case although in Bieling the court notes that general town taxes usually contain a highway tax within them. In sustaining the constitutionality of § 604, the Vermont Supreme Court points out that the problem is not one involving motor vehicle operators but rather one of the taxing authority of the state together with the power of the sovereign to bestow and withhold a privilege and decides that the withholding of operators' licenses for non-payment of poll taxes is a reasonable and valid exercise of the state's power to assure that citizens who share the benefits of government likewise share its burdens.

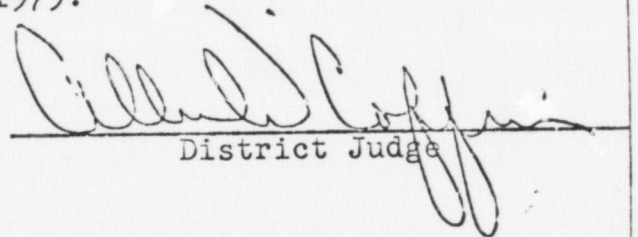
Present in the case before us and not present in Bieling is the admitted poverty of the plaintiffs and their inability to pay the tax. However, as discussed earlier, poverty alone does not create an unreasonable classification for equal protection purposes and although the plaintiffs may suffer inconvenience by the deprivation of their motor vehicle licenses, such deprivation does not amount to a denial of a right fundamental in the constitutional sense.

In summary, it appears that Vermont's decision to suspend a person's right to drive if he has not paid the Purchase and Use Tax is a permissible tax collection strategy, even though plaintiffs are unable to pay the tax at this time.

The suspension is not so harsh as to be unreasonable, and the collection remedy is related both to the tax on the purchase or use of a motor vehicle and to the use of the revenues raised by the tax for highway purposes.

Accordingly, plaintiffs' motion for summary judgment is denied, and defendant's motion is granted. The temporary restraining orders in effect are hereby dissolved. Let the Clerk enter judgment for the defendant without costs.

Dated at Burlington in the District of Vermont,
this 24th day of October, 1975.


District Judge

FOOTNOTES

1/ The Vermont legislature recently amended 32 V.S.A. § 8905(a) to prohibit the registration of an automobile for which the tax had not been paid. Act No. 96, approved April 30, 1975, effective July 1, 1976.

2/ See note 1, above.

3/ Two Kentucky cases have held that state statutes requiring payment of personal property taxes prior to registering an automobile were improper. See Schoo v. Rose, 270 S.W.2d 940 (Ky. 1954); Department of Revenue v. Williams, 351 S.W.2d 875 (Ky. 1961). Schoo required that all personal property taxes be paid as a condition precedent to registration, but Williams only required payment of the tax on the vehicle itself. Although the statutes in question were found to be in violation of the Kentucky constitution, the grounds of decision in each case was that the statute only applied to certain subdivisions of the class of all car owners. Consequently, the statutes were special tax laws as opposed to laws of general application. This characteristic made them invalid and not the fact that registration could be denied for nonpayment of taxes if the statute were otherwise fair and even-handed.

United States District Court

FOR THE
DISTRICT OF VERMONT

CIVIL ACTION FILE NO. 73-30

Jerome J. Wells et al

vs.

James E. Malloy

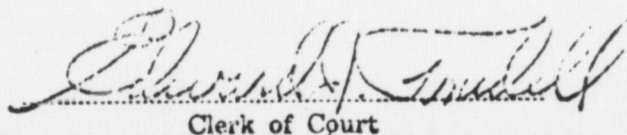
JUDGMENT

This action came on for trial (hearing) before the Court, Honorable Albert W. Coffrin, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

It is Ordered and Adjudged: Plaintiffs' motion for summary judgment is denied, defendant's motion is granted. The temporary restraining orders in effect are hereby dissolved. Judgment entered for the defendant without costs.

Dated at Burlington
of October , 1975 .

, this 24 day



Clerk of Court

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JEROME J. WELLS, ET AL., :

CIVIL ACTION FILE NO. 73-30

VS

JAMES E. MALLOY,
COMMISSIONER OF MOTOR
VEHICLES OF THE STATE
OF VERMONT

NOTICE OF APPEAL

Notice is hereby given that plaintiff in the above action, and all intervening plaintiffs, hereby appeal to the United States Court of Appeals for the Second Circuit from the order of the District Court dated October 24, 1975 denying plaintiffs' motion for summary judgment, granting defendant's motion for summary judgment, and dissolving the temporary restraining orders which were in effect.

Dated this 18th day of November, 1975.

Roger E. Kohn

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Michael H. Lipson

Vermont Legal Aid, Inc.
Attorneys for Intervening
Plaintiffs

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JEROME J. WELLS, ET AL.,

vs.

JAMES E. MALLOY,
COMMISSIONER OF MOTOR
VEHICLES OF THE STATE
OF VERMONT

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CIVIL ACTION FILE NO. 73-30

STIPULATION

The parties to the above entitled action, by and through their attorneys, mutually agree and stipulate as follows:

1. The temporary restraining orders which were issued in this cause with respect to the above plaintiff and intervening plaintiffs will be treated by the parties as remaining in effect until the termination of this litigation. This stipulation does not apply to any persons who have not, as of the present, intervened in this action; as to any such persons, no agreement or stipulation whatsoever is being entered into.

2. The parties agree that no transcript is necessary for the prosecution of the appeal in this cause, as this case was decided by the District Court without the presentation of any testimony or other evidence.

Dated as of the 21st day of November, 1975.

s/ Roger E. Kohn

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s/ Michael H. Lipson

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